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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 APRIL ESCOVER, ) NO. ED CV 06-450-E  
12 )  
12 Plaintiff, )  
13 )  
13 v. ) MEMORANDUM OPINION  
14 )  
14 JO ANNE B. BARNHART, COMMISSIONER )  
15 OF SOCIAL SECURITY ADMINISTRATION, )  
16 )  
16 Defendant. )  
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21 PROCEEDINGS  
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21 Plaintiff filed a complaint on May 9, 2006, seeking review of  
22 the Commissioner's denial of benefits. The parties filed a consent  
23 to proceed before a United States Magistrate Judge on May 31, 2006.  
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25 Plaintiff filed a motion for summary judgment on October 16,  
26 2006. Defendant filed a motion for summary judgment on November 16,  
27 2006. The Court has taken both motions under submission without oral  
28 argument. See L.R. 7-15; "Order," filed May 12, 2006.

**BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

Plaintiff, a former bartender, asserted disability based primarily on alleged pain, including allegedly disabling headaches (Administrative Record ("A.R.") 104, 113, 115, 156, 159, 164, 354-56, 376, 383-84). The Administrative Law Judge ("ALJ") examined the medical record and heard testimony from Plaintiff and from a vocational expert (A.R. 10-394).

The ALJ found Plaintiff has non-disabling bursitis and non-disabling disorders of the spine (A.R. 15-19). In denying benefits, the ALJ determined that Plaintiff's "statements concerning the intensity, duration and limiting effects of [her] symptoms are not entirely credible" (A.R. 16). The Appeals Council denied review (A.R. 5-7).

**SUMMARY OF PLAINTIFF'S CONTENTIONS**

Plaintiff contends the ALJ committed two errors: (1) "The ALJ failed to make proper credibility findings"; and (2) "The ALJ failed to properly consider the opinion of disability made by the treating physician." (Plaintiff's Motion at 2, 5.)

**STANDARD OF REVIEW**

Under 42 U.S.C. section 405(g), this Court reviews the Administration's decision to determine if: (1) the Administration's findings are supported by substantial evidence; and (2) the

1 Administration used proper legal standards. See Swanson v. Secretary  
2 of Health and Human Serv., 763 F.2d 1061, 1064 (9th Cir. 1985).  
3 Substantial evidence is "such relevant evidence as a reasonable mind  
4 might accept as adequate to support a conclusion." Richardson v.  
5 Perales, 402 U.S. 389, 401 (1971) (citation and quotations omitted).  
6

7 This Court "may not affirm [the Administration's] decision  
8 simply by isolating a specific quantum of supporting evidence, but  
9 must also consider evidence that detracts from [the Administration's]  
10 conclusion." Ray v. Bowen, 813 F.2d 914, 915 (9th Cir. 1987)  
11 (citation and quotations omitted). However, the Court cannot disturb  
12 findings supported by substantial evidence, even though there may  
13 exist other evidence supporting Plaintiff's claim. See Torske v.  
14 Richardson, 484 F.2d 59, 60 (9th Cir. 1973), cert. denied, 417 U.S.  
15 933 (1974); Harvey v. Richardson, 451 F.2d 589, 590 (9th Cir. 1971).  
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## 17 DISCUSSION

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19 After consideration of the record as a whole, Defendant's  
20 motion is granted and Plaintiff's motion is denied. The  
21 Administration's findings are supported by substantial evidence and  
22 are free from material<sup>1</sup> legal error.

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27 <sup>1</sup> The harmless error rule applies to review of  
28 Administrative decisions regarding disability. See Curry v.  
Sullivan, 925 F.2d 1127, 1129 (9th Cir. 1991).

1     **I.     The ALJ Properly Rejected Plaintiff's Credibility.**

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3             Plaintiff argues that the ALJ failed to state sufficient  
4 reasons for finding Plaintiff's testimony not credible. Plaintiff  
5 has not demonstrated material error.

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7             Plaintiff asserted subjective symptomatology of allegedly  
8 disabling severity (A.R. 376-87). In particular, Plaintiff  
9 represented to the Administration, in her testimony and elsewhere,  
10 that she suffers from frequent, "unbearable" headaches that make her  
11 face go numb, destroy her concentration, force her to throw up, and  
12 make her feel like her head is going to explode and her eyes are  
13 going to pop out (A.R. 113, 115, 156, 159, 164, 376-84). In finding  
14 not entirely credible these and other representations regarding  
15 Plaintiff's subjective symptomatology, the ALJ stated, inter alia,  
16 that there was no evidence of an impairment that would produce the  
17 headache pain described (A.R. 18).

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19             An ALJ's assessment of claimant credibility is entitled to  
20 "great weight." Weetman v. Sullivan, 877 F.2d 20, 22 (9th Cir.  
21 1989); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1986). An ALJ  
22 properly may disregard subjective complaints in the absence of proof  
23 of a medical impairment "which could reasonably be expected to  
24 produce the pain or other symptoms alleged." See 42 U.S.C. §  
25 423(d)(5)(A). Therefore, the ALJ properly could disregard those of  
26 Plaintiff's subjective complaints, including Plaintiff's alleged  
27 headaches, that lacked any demonstrated medical basis. Id.; see  
28 Konrad v. Sullivan, 1992 WL 442801 \*3 (N.D. Cal. August 27, 1992);

1 see also Fair v. Bowen, 885 F.2d 597, 601 n.1 (9th Cir. 1989) ("This  
2 is a threshold requirement that cannot be overlooked"); accord Cotton  
3 v. Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986).

4  
5 To the extent Plaintiff arguably demonstrated a medical  
6 impairment which reasonably could be expected to produce some degree  
7 of symptomatology,<sup>2</sup> the ALJ's discounting of Plaintiff's related  
8 subjective complaints "must be supported by specific findings."  
9 Varney v. Secretary, 846 F.2d 581, 584 (9th Cir. 1988) (citations  
10 omitted). In the present case, the ALJ made the requisite findings,  
11 supported by substantial evidence in the record.<sup>3</sup> The ALJ's specific  
12 findings included the finding that the objective medical evidence did  
13 not support Plaintiff's allegations of disabling symptomatology and  
14 the finding that Plaintiff did not seek medical treatment as  
15 persistently as one reasonably would expect from a person truly  
16 experiencing the degree of pain alleged (A.R. 18). As to the first  
17 finding, although "excess pain" testimony "cannot be rejected on the  
18 sole ground that it is not fully corroborated by objective medical  
19 evidence, the medical evidence is still a relevant factor . . ."  
20 Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir. 2001). As to the  
21 second finding, "[c]lear and convincing reasons for discrediting a  
22 claimant's testimony include . . . failure to seek treatment . . ."  
23 Fagundes v. Commissioner, 2001 WL 34043749 \*4 (D. Or. Sept. 10,

24  
25 <sup>2</sup> The ALJ found that Plaintiff had demonstrated medical  
26 impairments that could reasonably be expected to produce some  
27 symptoms (A.R. 16).

28 <sup>3</sup> This Court reaches the same conclusion regardless of  
whether the Court applies a "clear and convincing" standard or some  
less exacting standard with respect to the ALJ's specific findings.

2001); accord Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991);  
Fair v. Bowen, 885 F.2d 597, 603-04 (9th Cir. 1989); see also Chavez  
v. Department of Health and Human Services, 103 F.3d 849, 853 (9th  
Cir. 1996) (failure to seek "further treatment" for back injury among  
specific findings justifying rejection of claimant's excess pain  
testimony); Brawner v. Secretary, 839 F.2d 432, 433 (9th Cir. 1987)  
(misrepresentations made by claimant in the course of pursuing  
disability benefits justifies rejection of claimant's credibility);  
Jones v. Apfel, 2000 WL 1456907 (D. Or. Sept. 11, 2000) (infrequency  
of medical treatment justified the discounting of the claimant's pain  
testimony); Madrigal v. Sullivan, 777 F. Supp. 1503, 1507 (N.D. Cal.  
1991) (claimant's complaints of excess pain properly disregarded  
where complaints found to be exaggerated); Sweigart v. Heckler, 1985  
U.S. Dist. Lexis 21357 (E.D. Pa. March 27, 1985) (exaggerated  
testimony aimed at securing disability benefits equated with  
"malingering").

**II. The ALJ Did Not Commit Material Error in Connection with the**  
**Opinion of "the Treating Physician."**

The record contains a one-page medical report, the nature of  
which the parties dispute (A.R. 274). Plaintiff alleges, and  
Defendant denies, that one of Plaintiff's treating physicians  
authored this report. The Court need not determine the identity of  
the report's author, however. Assuming, arguendo, that a treating  
physician authored this report, and further assuming, arguendo, that  
the ALJ failed to give sufficient consideration to the report, any  
such error was harmless. The report reflects a "good prognosis" and

1 opines only that Plaintiff was "temporary" disabled between March 26,  
2 2002 and July 15, 2002 (A.R. 274). As such, even the full crediting  
3 of this report could not have altered the ALJ's decision. See  
4 Barnhart v. Walton, 535 U.S. 212 (2002) (successful disability  
5 claimant's inability to engage in substantial gainful activity must  
6 last, or be expected to last, for at least twelve months).

7  
8 **CONCLUSION**

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10 For all of the reasons discussed herein, Plaintiff's motion  
11 for summary judgment is denied and Defendant's motion for summary  
12 judgment is granted.

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14 LET JUDGMENT BE ENTERED ACCORDINGLY.

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16 DATED: November 22, 2006.

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19 CHARLES F. EICK  
20 UNITED STATES MAGISTRATE JUDGE  
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